Proposed Plans for Railroad Legislation

By Richard Waterman

Secretary of the Railroad Committee of the Chamber of Commerce of the United States

THE President has announced that he will return the railroads to their owners at the end of the present calendar year and has asked Congress to enact the necessary legislation before that time. Congress is making an earnest effort to comply with this request. The Senate and House Committees on Interstate Commerce have held railroad hearings lasting for many months and now have before them more than thirty different plans for railroad legislation that have been proposed by members of Congress, by the Interstate Commerce Commission and the state commissioners, by railroad presidents and railroad employes, by shippers and stockholders, bankers and business men, national organizations and individuals prominently identified with railroad matters.

Plans Proposed

Out of these thirty different plans seven may, perhaps, be regarded as typical:

The Senate Committee plan proposed in the Cummins bill, S. 2906, presenting the recommendations of the Special Subcommittee appointed by the Senate Committee on Interstate Commerce.

The Commerce Commission plan proposed in the Esch-Pomerene bill, H. R. 4378, presenting the views endorsed by nearly all of the members of the Interstate Commerce Commission.

The Railway Executives' plan proposed in the tentative draft of a bill laid before the House Committee on Interstate and Foreign Commerce by T. D. Cuyler, President of the Association of Railway Executives.

The Transportation Conference plan proposed in the Frelinghuysen bill, S. 2998, presenting the program of railroad legislation adopted by the National Transportation Conference held under the auspices of the Chamber of Commerce of the United States.

The Warfield plan proposed in the tentative draft of a bill laid

before the House Committee on Interstate and Foreign Commerce by S. Davies Warfield, President of the National Association of Owners of Railroad Securities.

The Amster plan proposed in the Lenroot bill, S. 2889, presenting the plan supported by the Citizens' National Railroads League.

The Plumb plan outlined in the Sims bill, H. R. 8157, presenting the plan proposed by Glenn E. Plumb, General Counsel of the Railroad Brotherhoods.

DISCUSSION OF PLANS

Ownership and Operation. Six of these plans favor the return of the railroads to their owners as soon as the necessary legislation can be enacted; and also favor corporate ownership and operation as a permanent railroad policy. The seventh—the Plumb plan—proposes that all of the railroads in the country shall be owned by the United States Government and shall be leased for a hundred years to an operating corporation composed in the main of the railroad executives and employes.

Consolidation and Competition. Five of the plans provide for either permissive or compulsory consolidation of existing railroad companies into strong competitive systems whenever the federal authorities may declare such consolidations to be in the public interest. The Amster and the Plumb plans provide for the complete consolidation of all railroads into a single national system thus putting an end to all competition.

Federal Incorporation. Five of the plans provide for either permissive or compulsory incorporation of all interstate carriers; while two—the Warfield and the Commerce Commission plans—oppose federal incorporation on the ground that it is a complicated, unnecessary and probably unconstitutional method of asserting the right of the Federal Government to regulate interstate commerce.

The Transportation Conference plan provides that all existing interstate railroads and all new consolidated companies shall be required to incorporate under a federal charter; and that each railroad company shall be managed by twelve directors of whom eight shall be elected to represent the stockholders, two to represent the employes and two to represent the principal interests in

the territory served by the system. The Amster plan provides for a board of eleven directors, including, one representing the Interstate Commerce Commission, one the state commissioners, two the employes, two commerce and industry, two the farmers, and three the stockholders. The Senate Committee plan calls for a board of directors including two representatives of classified employes and two representatives of the government.

Security Issues and Capital Expenditures. The plans all provide for exclusive Federal regulation of the issuance of railroad securities; and also for Federal regulation of the expenditure of the proceeds. The Senate Committee, Commerce Commission, Warfield and Amster plans assign this duty to the Interstate Commerce Commission; the Transportation Conference and the Railway Executives' plans entrust it to the Federal Transportation Board, and the Plumb plan provides that all railroad securities shall be retired and replaced by government bonds, and that all capital expenditures for railroad purposes shall be made by either the national or the local governmental authorities.

Regulation of Rates. Each of the seven plans provides for the regulation of rates affecting interstate commerce by the Interstate Commerce Commission; and five of them define statutory rules of rate-making intended to guide the Commission in fixing rates that shall be not only reasonable and non-discriminatory, but also adequate. The rules proposed by the several plans are as follows:

1. *Senate Committee Plan.*—The Commission shall divide the country into rate districts and the carriers into rate groups for rate making purposes. . . . . In making rates for each rate group the Commission shall take into consideration the interest of the public, the shippers, the wages of labor, the cost of maintenance and operation (including taxes), a fair return upon the value of the property used for transportation service, and the requirements for additional capital in order to enable the carriers to adequately perform their duties to the public.

2. *Railway Executives' Plan.*—The level of rates shall provide revenue sufficient to pay wages and other expenses of operation and a fair return on the value of the property used in the public service, and to establish and maintain a credit sufficient to attract the new capital necessary to meet the public need for transportation facilities. The Federal Transportation Board is also required to certify to the Interstate Commerce Commission the amount of operating revenues needed by the carriers to enable them to perform their functions.

3. *Transportation Conference Plan.*—The Commission shall determine . . . . such number of traffic sections as it may deem desirable for rate making purposes. . . . . The rate schedules shall be designed to produce a net aggregate annual railway operating income in each traffic section after provision has been made for renewals and depreciation, equal to not less than 6 per cent per annum upon the fair value of all the property in each traffic section devoted to the public use by all state and national railroad companies therein.

4. *Warfield Plan.*—The Commission shall divide continental United States into rate making districts . . . . and shall, as nearly as may be, establish and maintain, freight and passenger rates or levels of rates or charges in each rate making district that will enable the carriers as a whole allocated to each district to earn, after proper allowance has been made for renewals and depreciation, an aggregate annual net railway operating income equal to not less than 6 per cent upon their combined property investment accounts.

5. *Amster Plan.*—The corporation may from time to time initiate such schedules of rates as will be at least adequate to produce revenues sufficient to pay all proper operating expenses, taxes, rentals, depreciation, and maintenance charges, interest on bonds and other fixed charges, and all other proper expenses and charges, and to pay maximum dividends on all outstanding stock and stock receipts, and, in addition, to produce, in so far as the commission may deem necessary and proper, a sum not exceeding 2 per cent of the par value of all outstanding stock; and the Commission shall approve schedules of rates so initiated, which will, in its judgment, produce such revenues.

The Commerce Commission plan does not propose a definite rule of rate making, but suggests that the period of suspension of rates be shortened, and that the Interstate Commerce Commission be authorized to determine the division of rates between carriers, to consider the cost of service principle in fixing rates, and to exercise other broad functions affecting the general rate structure.

The Plumb plan provides that the Interstate Commerce Commission shall regulate all rates; and that if the rates fixed by the Commission do not produce a revenue sufficient to pay expenses, the United States Government shall pay the deficit out of the United States Treasury, and if they produce a surplus it shall be divided equally between the employes and the government.

Adequate Revenues. Analysis of the proposed rules of rate making shows that five of the proposed plans recognize the fact that if the roads are to remain solvent they must be allowed to earn revenues sufficient to enable them to pay all necessary expenses and a fair return on the capital already invested, and in addition to attract new capital in amounts sufficient to provide

for all necessary improvements and extensions of facilities and service. Various methods of accomplishing this purpose are proposed. *The Amster plan* provides for a direct government guarantee of a four per cent dividend on all stock issued by the corporation, and permits the payment of a six per cent dividend if earned. *The Transportation Conference plan* provides for a net return of six per cent on the aggregate fair value of the roads in each traffic section of the country; *the Warfield plan* for a return of six per cent on the aggregate property investment account in each of the three classification territories; and *the Senate Committee and Railway Executives' plans* for a fair return on the value of the property. *The Commerce Commission plan* places on the Commission no responsibility for providing adequate revenues for the railroads of the country as a whole; and *the Plumb plan* leaves the government free to either fix rates high enough to pay all expenses, or else supplement the revenue from rates and fares by an appropriation from funds raised by general taxation.

Excess Earnings. Several of the plans make definite provisions for limiting the amount of the earnings that any individual road shall be allowed to retain. Under uniform rates one road may earn a very high percentage return on its property investment, and another may be unable to pay dividends of more than one or two per cent. Nearly all of the plans make a definite effort to solve this problem of the strong and the weak roads. *The Transportation Conference plan* defines excess earnings in terms that are entirely fair to all of the roads, large and small earners alike; and provides that excess earnings shall be used for the creation of two contingent funds—an individual contingent fund created by each road to support its own credit, and a general contingent fund maintained by contributions from all prosperous roads to support the credit of the railroads of the country as a whole. This plan does not propose, as some have feared, to take from the rich and give to the poor, but rather to use railroad revenues as a whole in such a way as to help each road to help itself. *The Warfield plan* provides for the distribution of the excess earnings of each road, one third to the road and two thirds to be divided equally between labor and the public; and the Amster plan distributes all earnings in excess of six per cent—

forty per cent to labor, thirty per cent to the public for improvements, and retiring outstanding stock, and thirty per cent to the stock holders.

Wages and Working Conditions. Five of the seven plans provide for the creation of temporary or permanent boards for the adjustment of wages, hours of labor and other conditions of service of railroad employes; and two of them,—the Commerce Commission and the Railway Executives' plans—make no declaration in regard to the regulation of labor. *The Transportation Conference plan* provides for the adjustment of wages and other conditions of service of employes by boards consisting of equal numbers of representatives of employes and officers of the railroads with appeal in case of a deadlock to the Federal Transportation Board as referee. *The Senate Committee plan* provides for the creation of a Committee of Wages and Working Conditions composed of four employes and four representatives of the companies to settle all disputes between the roads and their employes, with appeal to the Railway Transportation Board in case of a deadlock; and also provides that the decisions of the Board, i.e., of the government, shall be final and that railroad strikes and lockouts shall be prohibited under penalty of fine or imprisonment or both. *The Warfield plan* authorizes the six Regional Commissions to act as boards of conciliation or arbitration in all controversies between carriers and employes in their respective regions, with appeal in case of a deadlock to the Interstate Commerce Commission. *The Amster plan* provides for the appointment from time to time of an advisory board composed of equal numbers of representatives of the employes and of the national railway corporation to investigate demands relating to wages, hours of labor or working conditions; and requires the boards to publish their findings and recommendations, which however shall not be binding on either party to the controversy. *The Plumb plan* provides for the determination of wages by the Board of Directors of the National Railways Operating Corporation; and for the adjustment of disputes between the officials and the men by boards to which the operating officials shall elect five members and the men five members, with appeal to the directors in case the board fails to reach an adjustment.

Federal Agencies of Regulation. The seven plans all provide

for the maintenance of the Interstate Commerce Commission as the sole federal agency for the regulation of interstate rates. In six of the plans the powers of the Commission are enlarged; but in the seventh—the Railway Executives' plan—and in the Senate Committee plan, certain administrative and executive functions now exercised by the Commission are transferred to the new Federal Transportation Board, the Commission, however, retaining its present powers of rate regulation and its valuation and accounting functions. One of the plans—the Warfield—creates six Regional Commissions to exercise concurrent jurisdiction with the Interstate Commerce Commission, and thus relieves the Commission, as far as possible, of a large amount of work that properly belongs to the Federal body, but can be delegated to the several Regional Commissions. Six of the plans also provide for the creation of a new federal agency of regulation to supplement the quasi-judicial work of the Interstate Commerce Commission by performing many important executive and administrative functions, of which some are transferred from the present list of duties of the Interstate Commerce Commission, but nearly all are new functions assumed by the federal government for the first time under the present legislation.

The Conference plan creates a Federal Transportation Board composed of five members appointed by the President whose general duty it shall be to promote the development of a national system of rail, water and highway transportation, to inquire into and propose measures for preventing abuses therein, to regulate capital expenditures and security issues, to determine the grouping or consolidation of railroads deemed to be in the public interest, and to carry out plans authorized by Congress for merging all roads engaged in interstate commerce into strong competing systems severally owned and operated by companies subject as corporations to the jurisdiction of the United States.

The Senate Committee plan creates a Railway Transportation Board with five members appointed by the President: to prepare and adopt a plan for the consolidation of the railway properties of the United States into not less than twenty, nor more than thirty-five systems; to make inquiry respecting the adequacy and efficiency of the transportation facilities and service of the whole country, and when and how they should be enlarged or

improved; to inquire into the state of credit of all common carriers subject to the Act to Regulate Commerce, and as to the new capital which the public interest may require the carriers to secure in order that adequate and efficient service and facilities may at all times be provided; and to exercise many of the functions and powers heretofore conferred upon the Interstate Commerce Commission, notably the administration of the Car Service Act, the Safety Appliance Acts, the Hours of Service Act, the Locomotive Inspection Act, and others of the same general character.

The Railway Executives' plan provides for a Federal Transportation Board composed of three commissioners appointed by the President and charged with the general oversight from the point of view of the public interest, of all transportation; and suggests that this board should be coordinate with the Interstate Commerce Commission and should relieve it of all its functions except rate regulation, valuation and accounting.

The Warfield plan provides for the creation of the National Railways Association operated without profit to the railroads and managed by the nine Interstate Commerce Commissioners and eight representatives of the railroads, to furnish an immediate means for assisting and financing the return of the roads to private operation; to be continued as a permanent means for mobilizing and purchasing equipment to be leased to the railroads; to provide a management or agency that will continue or put into effect the joint use of terminals, unification of facilities, re-routing of freight by pooling or otherwise, and such other methods of operation as have been found to be successful and expedient during Federal control; and to furnish a standing, trained and efficient means for immediate mobilization of the railroads for war purposes without additional legislation.

The Amster plan provides for the creation of an Efficiency and Economy Board of five members appointed by the President, four from a list submitted by the National engineering societies and one nominated by the employes, to study facilities and service and to devise and recommend improvements in physical equipment and in operating methods.

The Plumb plan provides for the creation of the Railway Board of Appraisement and Extension composed of the nine Interstate Commerce Commissioners and three other members selected by

the members of the corporation to determine the amount of compensation to be paid by the government to the present owners of the roads and the amount to be paid for new extensions and improvements.

TRANSPORTATION CONFERENCE PLAN

The most carefully worked out plan for railroad legislation that has been laid before the Committees of Congress during the hearings is that prepared by the National Transportation Conference held under the auspices of the Chamber of Commerce of the United States. This Conference included in its membership prominent men belonging to every important interest affected by transportation—commercial, industrial, agricultural, financial, labor, governmental, economic, civic and social. The fundamental features of this plan have been approved by a referendum vote of the business men of the country. Certain additional features which are grouped separately in the following summary are in harmony with the fundamental features, but have not yet been submitted to a referendum vote.

The Transportation Conference recommends:

1. Corporate ownership and operation of railroads.
2. Return of the roads to their owners as soon as the necessary legislation can be enacted.
3. Consolidation of existing roads in strong, competing systems.
4. Compulsory federal incorporation.
5. Federal regulation of capital expenditures and security issues.
6. Federal regulation of intrastate rates affecting interstate commerce.
7. Adoption of a statutory rule of rate making that will assure to the railroads revenue sufficient to enable them to furnish the public with adequate facilities and efficient and economical service.
8. Creation of a Federal Transportation Board to promote the development of a national system of rail, water and highway transportation.

The additional features recommended by the Conference but not yet submitted to a referendum vote, include:

9. Creation of a company contingent fund for each railroad

and a general contingent fund for all railroads, to be used in strengthening and stabilizing railroad credit.

10. Creation of a railroad reserve fund for use during the period of transition from government to corporate management.

11. Creation of boards consisting of equal numbers of representatives of employes and officers of the railroads for the adjustment of wages, hours of labor and other conditions of service of railroad employes.

12. Organization of the board of directors of each consolidated railroad company with twelve members two of whom shall be representatives of the employes of the system, and two shall be selected by the Federal Transportation Board to represent the principal interests involved in the territory served by the system.

Of the recommendations of the Transportation Conference listed above, nearly all have already been incorporated in one form or another in the Cummins bill.

SENATE COMMITTEE PLAN

The most definite and comprehensive plan for railroad legislation that is now before the Committees of Congress is that drafted by the Senate Sub-committee on Interstate Commerce and incorporated in the Cummins bill. The regulatory features of this bill have been summarized by Alfred P. Thom, General Counsel of the Association of Railway Executives, as follows:

> It controls the charges of the carriers, except those it leaves to the states to control:
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> It determines the wages the carriers shall pay to labor:
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> It provides for consolidations—at first voluntary, but after seven years compulsory—according to plans determined by he government:
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> If the carriers consolidate voluntarily, it forces a readjustment of their capitalization, to values fixed by government agencies, although this capitalization has been adopted with the tacit concurrence of Congress, under the authority of state laws, and is outstanding in the hands of innocent purchasers for value:
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> If there has been no complete consolidation at the end of seven years, the owners of these properties must submit to having them valued and taken away:
>
> It empowers the Government Board to distribute traffic which it considers congested, and to divert traffic, not routed by a shipper, from a carrier to which an originating or intermediate carrier may, for business reasons and with business advantage, desire to deliver it:

It throws the terminals, freight and passenger, and other facilities, of one carrier open to the use of another, or other carriers, at the Government's discretion:

It places upon the managing boards of all carriers representatives of labor and of the public:

It makes a Government Board the financial manager of the railroads, conferring upon this Government agency power to determine what capital expenditures and what financing is compatible with the public interest:

It prevents any extension of line or new construction unless specifically authorized by Government authority:

It confers upon a Government Board power to take the locomotives and cars of one company (without reference to that company's views of its own needs) and assign them for use on another road:

It confers upon a Government Board power to require the purchase or construction by a carrier of equipment and other facilities, not according to its own judgment, but in the discretion of the Board:

It confers power on a Government agency to require construction by the carriers of docks and the extension of rail lines to them without limit of distance:

It establishes a rigid long-and-short-haul clause, thus depriving the carriers of the economic advantage of competing for traffic which may move either by rail or water, or by shorter rail lines:

While it controls interstate rates, it does not control, except in some cases by the circuitous and unsatisfactory method of appeal, rates on state traffic, thus withholding a homogeneous system of regulation, and leaving the carrier subject to many conflicting policies and impossible rate situations:

The above outline of the proposed system of regulation (says the Counsel of the railway executives) is not intended as a criticism of, or an objection to, the assertion of some of the powers mentioned, for some of them are entirely justified; but the statement is made for the purpose of indicating the extent to which it is proposed to extend the power of regulation, and to call attention to how little is left to the carriers in the way of initiative, enterprise, real management, or control of financial results.

PRESENT STATUS OF RAILROAD LEGISLATION

The present status of railroad legislation (October, 1919) is as follows:

The Cummins bill drafted by a sub-committee consisting of Senators Cummins of Iowa, Kellogg of Minnesota, Pomerene of Ohio, Poindexter of Washington and Robinson of Arkansas, is now under consideration by the full Senate Committee on Interstate Commerce, and before this article is published in the *Annals* the Committee will probably have completed its labors

and reported the bill to the Senate. The hearings on the Esch-Pomerene bill before the House Committee on Interstate and Foreign Commerce have been completed, and a sub-committee consisting of Representatives Esch of Wisconsin, Sims of Tennessee, Hamilton of Michigan, Winslow of Massachusetts, and Barkley of Kentucky, has been appointed to draft a committee bill that will be substituted for the Esch-Pomerene bill and will probably be reported to the House before November first. These two bills will probably be debated—briefly in the House and at considerable length in the Senate—and will then be passed and sent to conference. They will undoubtedly differ in many important points. As soon as the conference committee reaches an agreement the compromise bill will be reported back to the House and the Senate for passage. When it is finally enacted it will go to the President for his approval, and when he signs it the government will, for the first time, be in a position to return the roads to their owners without courting financial disaster. Without doubt, however, the roads will be handed back to their owners and the country will return to the policy of corporate ownership and operation.